

## 46 Am. Jur. 2d Judges § 93

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### Judges

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### IX. Disqualification to Act in Particular Case

#### B. Grounds for Disqualification

##### 2. Interests as Grounds for Disqualification

##### b. Particular Interests as Grounds for Disqualification

##### (1) Pecuniary or Property Interest

## § 93. Compensation or benefits as interest disqualifying judge; on fee basis

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  42

### A.L.R. Library

[Disqualification of judge, justice of the peace, or similar judicial officer for pecuniary interest in fines, forfeitures, or fees payable by litigants, 72 A.L.R.3d 375](#)

[Interest of judge in an official or representative capacity, or relationship of judge to one who is a party in an official or representative capacity, as disqualification, 10 A.L.R.2d 1307](#)

Some jurisdictions find that a judge is not necessarily disqualified from hearing a case, the result of which may have an impact on the judge's compensation.<sup>1</sup> This is especially true where the court must hear the case because of necessity.<sup>2</sup>

On the other hand, where the judge's sole compensation is from fees or fines, the defendant in a criminal case is unconstitutionally deprived of due process of law by being subjected to trial before a judge who will be paid for his or her service in the case only when he or she convicts the defendant,<sup>3</sup> even if the defendant has the right of appeal with a trial de novo where the fine exceeds a certain amount,<sup>4</sup> unless the amounts recovered by the judge are so small that they may properly be ignored as being

de minimis.<sup>5</sup> Where a judge is entitled to a fee regardless of the outcome of the case, however, the judge has no pecuniary interest in the result which will disqualify the judge. Similarly, costs of suit payable to the county do not disqualify a judge.<sup>6</sup>

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Footnotes

- 1 [Prawdzik v. City of Grand Rapids](#), 313 Mich. 376, 21 N.W.2d 168, 165 A.L.R. 1165 (1946); [Riley v. Carter](#), 1933 OK 448, 165 Okla. 262, 25 P.2d 666, 88 A.L.R. 1018 (1933).
- 2 [Stiftel v. Malarkey](#), 378 A.2d 133 (Del. Ch. 1977), judgment rev'd on other grounds, 384 A.2d 9 (Del. 1977); [Maron v. Silver](#), 14 N.Y.3d 230, 899 N.Y.S.2d 97, 925 N.E.2d 899 (2010).  
As to the rule of necessity and its effect on the disqualification of an interested judge, see § 84.
- 3 [In re Tullius](#), 73 Ohio L. Abs. 233, 137 N.E.2d 312 (Prob. Ct. 1955); [State ex rel. Osborne v. Chinn](#), 146 W. Va. 610, 121 S.E.2d 610 (1961).  
A justice of the peace who received court costs as fees had a direct interest in whether or not a party paid court costs and was disqualified from deciding the issue of the truthfulness of a pauper's affidavit. [Taylor v. Public Convalescent Service](#), 245 Ga. 805, 267 S.E.2d 242 (1980).
- 4 [Roberts v. Noel](#), 296 S.W.2d 745 (Ky. 1956).
- 5 [Tumey v. State of Ohio](#), 273 U.S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 5 Ohio L. Abs. 159, 5 Ohio L. Abs. 185, 50 A.L.R. 1243 (1927).
- 6 [Vera v. State](#), 111 Tex. Crim. 85, 10 S.W.2d 383 (1928).

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